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| 10/726,087 | 12/02/2003 | Young-Ky Kim | 678-0245 CON | 3399 |
| 66547 7590 01/23/2009 THE FARRELL LAW FIRM, P.C. 333 EARLE OVINGTON BOULEVARD SUITE 701 UNIONDALE, NY 11553 | | | | |
| EXAMINER | | | | |
| LIM, STEVEN | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/726,087

Applicant(s)

KIM ET AL.

Examiner

STEVEN LIM

Art Unit

2617

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-16, 19-21 and 23-30 is/are rejected.
- 7) ☒ Claim(s) 9, 17, 18, 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

In view of the Appeal Brief filed on 10/17/2008, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Lester Kincaid/

Supervisory Patent Examiner, Art Unit 2617.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-8, 10-16, 19-21, 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odenwalder et al. (US 5909434) in view of Ikeda et al. (US 5691995).
 4. Regarding Claim 1, Odenwalder et al. discloses a transmission device including a first message (signaling data) generator for encoding first input data of a first bit stream to generate a first frame message having a first frame length (frame generator places signaling data of 32 bits into frames, Fig. 2), a second message (user data) generator for encoding second input data of a second bit stream longer than the first bit stream to generate a second frame message having a second frame length longer than the first frame length (frame generator also places user data at multiples of 32 bits into frames, Col. 3, Lines 22-30), replacing portion of the second frame message with the first frame message (Data is punctured thereby removing bits of data and leaving an amount of data remaining and signaling data is then added in an amount equal to the data remaining thus replacing a portion of the second frame message with the first

frame message, Col. 10, Lines 35-45) and a spreader for spreading an output of the multiplexer (multiplexer shows two outputs from one input indicating a spreading function, Fig. 2, Item 46), however Odenwalder et al. fails to disclose a multiplexer replacing a portion of the second frame message with the first frame message.

In an analogous art, Ikeda et al. discloses a receiving two input signal streams, puncturing one stream and then multiplexing both streams together thus a multiplexer replacing a portion of the second frame message with the first frame message (Col. 5, Lines 25-50), which enables high priority data to be sent via a low code rate (Col. 3, Lines 46-48).

It would have been obvious to one having ordinary skill in the art at the time of invention was made to have a multiplexer replace one set of data with another set of data in order to enable high priority data to be sent via a low code rate.

5. Regarding Claim 2, Odenwalder et al. further discloses the first frame message and the second frame message are multiplexed when the first frame message is generated during transmission of the second frame message (signaling data queued for transmission then signaling data is multiplexed with current transmission of frames including user data, Col. 3, Lines 19-30).

6. Regarding Claim 3, Odenwalder et al. further teaches the multiplexer intermixingly outputs the message (Col. 6, Lines 48-50), however Odenwalder et al. fails to disclose outputting the message in a sequence of a portion of the second frame

message, the replaced first frame message, and a remaining portion of the second frame message.

Examiner takes official notice that outputting a message and frames in any specific order or sequence to be well known in the art.

It would have been obvious to one having ordinary skill in the art at the time of invention was made to output the frames messages in the sequence in order to prioritize the transmission of the second message.

7. Regarding Claim 4, Odenwalder et al. further teaches the multiplexer intermixingly outputs the message (Col. 6, Lines 48-50), however Odenwalder et al. fails to disclose outputting the message in a sequence the replaced first frame message and the second frame message from which a portion corresponding to the first frame message is deleted.

Examiner takes official notice that outputting a message and frames in any specific order or sequence to be well known in the art.

It would have been obvious to one having ordinary skill in the art at the time of invention was made to output the frames messages in the sequence in order to prioritize the transmission of the first frame message.

8. Regarding Claim 5, Odenwalder et al. further discloses a power controller for increasing a transmission power of the remaining portion of the second frame message, following the replaced first frame message, to be higher than that of the first frame message (Col. 13, Lines 5-15, Fig. 2, Item 44).

9. Regarding Claim 6, Odenwalder et al. further discloses the first frame message has a length of 32 bits and the second frame message (user data) has a frame length of 20ms (Col. 3, Lines 18-30), however Odenwalder et al. fails to disclose the first frame message has a length of 5ms.

Examiner takes official notice that it is well known in the art that a frame can have any length and is only restricted by the system on which the frame is transported.

It would have been obvious to one having ordinary skill in the art at the time of invention was made to use a first frame message frame length of 5ms as a design choice when a 5ms frame is needed.

10. Regarding Claim 7, Odenwalder et al. further discloses the second frame generator comprises a CRC generator for generating CRC bits according to the second input data of the second frame length (Col.3, Lines 31-34, Fig. 2, Item 32), a tail bit generator for generating tail bits and adding the generated tail bits to an output of the CRC generator (Col. 3, Lines 33-39, Fig. 2, Item 34), a channel encoder for encoding the tail bit added second frame data at a predefined coding rate (Col. 3, Lines 42-52, Fig. 2, Item 36), and an interleaver for interleaving the encoded frame message by the second frame length (Col. 3, Lines 59-62, Fig. 2, Item 42).

11. Regarding Claim 8, Odenwalder et al. further discloses the interleaver uniformly distribute symbols generated by encoding one data bit over the respective durations of the whole frame (Col. 3, Lines 59-62).

12. Regarding Claim 10, Odenwalder et al. further discloses the spreader comprises an orthogonal code spreader for spreading the frame message output from the

multiplexer with an orthogonal code for a dedicated control channel (orthogonal Walsh code, Col. 4, Lines 24-30), and a pseudo-random noise spreader for spreading an output of the orthogonal code spreader with a PN sequence (Col. 4, Lines 44-50).

13. Regarding Claim 11, Odenwalder et al. discloses a transmission device including a first message (signaling data) generator for encoding first input data of a first bit stream to generate a first frame message having a first frame length (frame generator places signaling data of 32 bits into frames, Fig. 2), a second message (user data) generator for encoding second input data of a second bit stream longer than the first bit stream to generate a second frame message having a second frame length longer than the first frame length (frame generator also places user data at multiples of 32 bits into frames, Col. 3, Lines 22-30), replacing portion of the second frame message with the first frame message (Data is punctured thereby removing bits of data and leaving an amount of data remaining and signaling data is then added in an amount equal to the data remaining thus replacing a portion of the second frame message with the first frame message, Col. 10, Lines 35-45) and a spreader for spreading an output of the multiplexer (multiplexer shows two outputs from one input indicating a spreading function, Fig. 2, Item 46), however Odenwalder et al. fails to disclose a multiplexer replacing a portion of the second frame message with the first frame message.

In an analogous art, Ikeda et al. discloses a receiving two input signal streams, puncturing one stream and then multiplexing both streams together thus a multiplexer replacing a portion of the second frame message with the first frame message (Col. 5,

Lines 25-50), which enables high priority data to be sent via a low code rate (Col. 3, Lines 46-48).

It would have been obvious to one having ordinary skill in the art at the time of invention was made to have a multiplexer replace one set of data with another set of data in order to enable high priority data to be sent via a low code rate.

14. Regarding Claim 12, Odenwalder et al. further discloses the first frame message and the second frame message are multiplexed when the first frame message is generated during transmission of the second frame message (signaling data queued for transmission then signaling data is multiplexed with current transmission of frames including user data, Col. 3, Lines 19-30).

15. Regarding Claim 13, Odenwalder et al. further teaches the multiplexer intermixingly outputs the message (Col. 6, Lines 48-50), however Odenwalder et al. fails to disclose outputting the message in a sequence of a portion of the second frame message, the replaced first frame message, and a remaining portion of the second frame message.

Examiner takes official notice that outputting a message and frames in any specific order or sequence to be well known in the art.

It would have been obvious to one having ordinary skill in the art at the time of invention was made to output the frames messages in the sequence in order to prioritize the transmission of the second message.

16. Regarding Claim 14, Odenwalder et al. further teaches the multiplexer intermixingly outputs the message (Col. 6, Lines 48-50), however Odenwalder et al. fails to disclose outputting the message in a sequence the replaced first frame message and the second frame message from which a portion corresponding to the first frame message is deleted.

Examiner takes official notice that outputting a message and frames in any specific order or sequence to be well known in the art.

17. It would have been obvious to one having ordinary skill in the art at the time of invention was made to output the frames messages in the sequence in order to prioritize the transmission of the first frame message.

18. Regarding Claim 15, Odenwalder et al. further discloses a power controller for increasing a transmission power of the remaining portion of the second frame message, following the replaced first frame message, to be higher than that of the first frame message (Col. 13, Lines 5-15, Fig. 2, Item 44).

19. Regarding Claim 16, Odenwalder et al. further discloses the first frame message has a length of 32 bits and the second frame message (user data) has a frame length of 20ms (Col. 3, Lines 18-30), however Odenwalder et al. fails to disclose the first frame message has a length of 5ms.

Examiner takes official notice that it is well known in the art that a frame can have any length and is only restricted by the system on which the frame is transported.

It would have been obvious to one having ordinary skill in the art at the time of invention was made to use a first frame message frame length of 5ms as a design choice when a 5ms frame is needed.

20. Regarding Claim 19, Odenwalder et al. further discloses a power controller for increasing a transmission power of the remaining portion of the second frame message, following the replaced first frame message, to be higher than that of the first frame message (Col. 13, Lines 5-15, Fig. 2, Item 44).

21. Regarding Claim 20, Odenwalder et al. further discloses the second frame is generated by generating CRC bits according to the second input data of the second frame length (Col.3, Lines 31-34, Fig. 2, Item 32), generating tail bits and adding the generated tail bits to an output or second data from the CRC generator (Col. 3, Lines 33-39, Fig. 2, Item 34), encoding the tail bit added second frame data at a predefined coding rate (Col. 3, Lines 42-52, Fig. 2, Item 36), and interleaving the encoded frame message by the second frame length (Col. 3, Lines 59-62, Fig. 2, Item 42).

22. Regarding Claim 21, Odenwalder et al. further discloses symbols generated by encoding one data bit over the respective durations of the whole frame are uniformly distributed (Col. 3, Lines 59-62).

23. Regarding Claim 23, Odenwalder et al. further discloses spreading the frame message output from the multiplexer with an orthogonal code for a dedicated control channel (orthogonal Walsh code, Col. 4, Lines 24-30), and spreading an output of the orthogonal code spreader with a PN sequence (Col. 4, Lines 44-50).

24. Regarding Claim 24, Odenwalder et al. discloses a transmission device including a despreader for despread a received signal (Col. 7, Lines 3-39, Fig. 5), a first message receiver for deinterleaving the despread signal by the first frame length and decoding the deinterleaved signal to generate a first frame message (SR receiver, Col. 7, Lines 56-62, Fig. 6), and a second message receiver for deinterleaving the despread signal by the second frame length and decoding the deinterleaved signal to generate a second frame message (UR receiver, Col. 7, Lines 56-62, Fig. 6).

25. Regarding Claim 25, Odenwalder et al. further discloses the first frame message and the second frame message are multiplexed when the first frame message is generated during transmission of the second frame message (signaling data queued for transmission then signaling data is multiplexed with current transmission of frames including user data, Col. 3, Lines 19-30).

26. Regarding Claim 26, Odenwalder et al. discloses a transmission device including deinterleaving the despread signal by the first frame length and decoding the deinterleaved signal to generate a first frame message (SR receiver, Col. 7, Lines 56-62, Fig. 6), and deinterleaving the despread signal by the second frame length and decoding the deinterleaved signal to generate a second frame message (UR receiver, Col. 7, Lines 56-62, Fig. 6).

27. Regarding Claim 27, Odenwalder et al. further discloses the first frame message and the second frame message are multiplexed when the first frame message is generated during transmission of the second frame message (signaling data queued for

transmission then signaling data is multiplexed with current transmission of frames including user data, Col. 3, Lines 19-30).

28. Regarding Claim 28, Odenwalder et al. further discloses a power controller for increasing a transmission power of the remaining portion of the second frame message, following the replaced first frame message, to be higher than that of the first frame message (Col. 13, Lines 5-15, Fig. 2, Item 44).

29. Regarding Claim 29, Odenwalder et al. further discloses increasing a transmission power of the remaining portion of the second frame message, following the replaced first frame message, to be higher than that of the first frame message (Col. 13, Lines 5-15, Fig. 2, Item 44).

30. Regarding Claim 30, Odenwalder et al. further discloses a power controller for increasing a transmission power of the remaining portion of the second frame message, following the replaced first frame message, following the inserted first frame message (Col. 13, Lines 5-15, Fig. 2, Item 44).

Allowable Subject Matter

Claims 9,17-18, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-8,10-16,20,21, and 23-29 have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments filed 10/17/2008 have been fully considered but they are not persuasive. Regarding applicant's argument towards claims 1, 11, and 24 that the claims disclose a first and second frame message which are two frames and thus the references fails to disclose this because the reference deals with only one frame, Examiner disagrees because the first and second frame message as broadly interpreted is disclosed by Odenwalder et al. not as two distinct frames but two messages which are within a frame which is disclosed by the reference as signaling data messages and user data messages which are placed into a frame. The applicant does not claim a first and second frame generator but a first and second frame message generator thus the limitations as broadly interpreted and disclosed are met by the references as listed above in the rejection. Regarding applicant's argument that the references do not teach the second frame message longer than the first frame message, Examiner disagrees because the limitations as broadly interpreted and disclosed are taught by Odenwalder et al. as the frame generator places the user data into integer multiples of 32 bits which is longer than the signaling data which is exactly 32 bits Odenwalder et al. (Col. 3, Lines 24-30). Therefore the claimed limitations are met by the Odenwalder et al. in view of Ikeda et al. as disclosed above in the rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Lim whose telephone number is (571) 270-1210. The examiner can normally be reached on Mon-Thurs 9:00am-4:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571)272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. L./
Examiner, Art Unit 2617

/Lester Kincaid/
Supervisory Patent Examiner, Art Unit 2617